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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/935,966	08/23/2001	James J. Rahal	13099	1546

7590 04/18/2005
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EXAMINER

WINKLER, ULRIKE

ART UNIT	PAPER NUMBER
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1648

DATE MAILED: 04/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/935,966

Applicant(s)

RAHAL, JAMES J.

Examiner

Ulrike Winkler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 10-15 and 20-39 is/are pending in the application.
- 4a) Of the above claim(s) 1-4 and 10-15 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-22, 24-28 and 30-39 is/are allowed.
- 6) ☒ Claim(s) 23, 29, 35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 3, 2005 has been entered.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

In order to facilitate the prosecution of this application, Applicant is requested to cancel all non-elected embodiments from the claims.

Claim Rejections - 35 USC § 103

The rejection of claims 5-9 and newly added claim 19 under 35 U.S.C. 103(a) as being unpatentable over Crance et al. (Travaux, 1999, see applicants IDS) in view of Albrecht et al. (U.S. Pat. No. 6,387,365), Takahashi et al. (Antiviral Research, 1998) and Gkecil et al. (Journal of Neurological Science, 1999) **is withdrawn** in view of applicants cancellation of the claims.

Claim Rejections - 35 USC § 112

The rejection of claim 24 under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement **is withdrawn** in view of applicants amendment to the claims. The claims are drawn to a method of treating meningitis, encephalitis or meningo-encephalitis caused by West Nile virus infection in a human patient using an effective amount of interferon alpha-2b.

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The interferon alpha-2b is administered intravenously. The declaration filed under 37 CFR 1.132 on February 3, 2005 by Dr. Rahal is sufficient to overcome the 35 U.S.C. 112 rejection. The evidence provided in the declaration shows that patients who are infected with West Nile virus can be treated with interferon alpha-2b administered intravenously. Over the same time course, patients who received the interferon alpha-2b treatment showed greater symptomatic improvement than the placebo treated individuals. Therefore, based on the evidence provided in the declaration the prior rejection is withdrawn.

Claim Objections

Claims 23, 29 and 35 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. In this instance the base claims require intravenous administration while the dependent claim limits the administration to subcutaneous administration. Intravenous administration is a different route of administration from subcutaneous administration. Here the dependent claim is structured in such a way that ignores the specific route of administration required in the independent claim. Correction is required.

Conclusion

Claims 20-22, 24-28, 30-34, 36-39 are allowable.

Claims 23, 29 and 35 are objected to.

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Papers related this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG (November 15, 1989). The Group 1600 Official Fax number is: (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center representative whose telephone number is (571)-272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ulrike Winkler, Ph.D. whose telephone number is 571-272-0912. The examiner can normally be reached M-F, 8:30 am - 5 pm. The examiner can also be reached via email [ulrike.winkler@uspto.gov].

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel, can be reached at 571-272-0902.


ULRIKE WINKLER, PH.D.
PRIMARY EXAMINER 4/15/05